original grant. The fact that the need of a way may suffice to show this intention is no ground for saying it will justify the appropriation of a stranger's land.

Again the reasons of policy set forth by *Dutton* v. *Taylor* are not so urgent practically as theoretically; as a matter of fact land will rarely remain tied up any length of time for want of a way. There are several remedies. The owner may sometimes, as he would have been allowed to do in this case, enter by license of the other landowner. He may often purchase a right of way. He may petition to have a highway laid out. He may finally be rid of the whole matter by selling out to the adjoining owners. To grant such ways would radically disturb private property rights, and the hardships and injustice incident to this disturbance would seem to outweigh the benefits. It may then be said both on principle and authority that what is generally termed a way of necessity is merely a necessary incident to a grant, that pure necessity in itself cannot authorize the appropriation of another's land, that the right to a way of necessity properly so called does not exist.

DAMAGES FOR MISTAKES IN TELEGRAMS. — The accepted rule as to the damages recoverable for the breach of a contract to transmit a telegram is boldly ignored in a late case. The plaintiff gave to the defendant, a telegraph company, for transmission to his attorneys, a message which read: "Attach property for seven hundred ninety dollars;" as delivered it read: "Even hundred ninety dollars." The attorneys attached for the latter amount, and thereby the remainder of the plaintiff's claim was lost. The court assumed in their decision that the defendants are liable for the full amount of this loss. *Western U. T. Co.* v. *Beals*, 76 N. W. Rep. 903 (Neb.).

In the case of a negligent transmission of a telegram the courts have almost universally applied the general rule of *Hadley* v. *Baxendale*, 9 Exch. 341, which limits the consequential damages for a breach of contract to those within the contemplation of the parties at the time of entering into the agreement. So in every case the struggle at the trial is to show one of two things: either an actual notice, given by the sender to the operator, of the possibility of special damage, or a constructive notice given to him by the very words of the message. *Western U. T. Co.* v. *Landis*, 18 Ill. App. 57; *Squire* v. *Western U. T. Co.*, 98 Mass. 232. Upon the latter point there seem to be two lines of decisions, the first logically adhering to the rule and requiring the message to give the operator specific notice of the possibility of loss, the second holding it sufficient if the business importance of the message appears clearly. *Primrose* v. *Western U. T. Co.*, 154 U. S. 1; *Postal T. Co.* v. *Lathrop*, 131 Ill. 575. In either case the remedy is notoriously inadequate. Accordingly, some few courts, not relying upon any principle but frankly recognizing the anomaly, have refused to apply the rule of *Hadley* v. *Baxendale*, *supra*; *Western U. T. Co.* v. *Way*, 83 Ala. 542; *Western U. T. Co.* v. *Reynolds*, 77 Va. 173.

This judicial legislation, and the numerous modern remedial statutes, lead one to question whether the law of damages has been properly applied to the case of the telegram. Damages flowing from a breach of contract are of two kinds, direct and consequential. It is only in the case

of consequential losses that the rule of *Hadley* v. *Baxendale* is law. But is not the damage in the case in hand direct? The direct loss, as in all cases of breach of contract, is the value of the contract. The telegraph company has failed to deliver the information given to it; the value of the contract lost is, then, the value of the information transmitted. In an analogous case a common carrier without notice is held for the value of a package negligently lost. So in the principal case the court correctly assumes that the measure of damages is the difference between the sum attached for and the debt. A solution of all difficulties, then, would seem to be to recognize that the loss of the intelligence is a direct loss, and that the standard of damages is the inherent value of that information.

CONSIDERATION VALUELESS IN PART. — Where some of the stipulations of an agreement are open to exception in point of legal validity, it is always a difficult problem to determine whether the other provisions are enforceable. The question arose recently in an attempt by a landlord to compel the lessee to perform his agreement under an oral contract for the lease of certain saloon buildings. The lease contained a collateral stipulation that the landlord should refrain from selling cigars upon his adjoining premises. By the local statute of frauds the lease itself was valid, but the collateral provision was unenforceable. Upon these facts the court held the whole contract bad for failure of consideration. *Higgins* v. *Gager*, 47 S. W. Rep. 848 (Ark.).

It is of much importance, in discussing the present case, to note how many are the possible phases of the problem. Whether the contract is unilateral or bilateral, whether the promisee or the promisor is in alleged default, and whether the part obligation in question is valueless, illegal, or *contra bonos mores*. These distinctions, too often ignored by the courts, make any simple rule impossible. The accepted rules chance to have been developed largely in cases of unilateral contracts where the consideration was in part illegal. In such cases a promisee who has completely performed can require of the promisor performance of those agreements which are legal; but, in the converse case, the performance by the promisee of an illegal act as part consideration is against public policy, nor could such promisee, by performing the legal parts only, call upon the promisor to perform. *City Works* v. *Jones*, 102 Cal. 506; *Pettit's Admrs.* v. *Pettit's Distributees*, 32 Ala. 288. These cases of unilateral contracts, where the provisions are in part illegal, are not always carefully distinguished from the cases where the stipulations are in part valueless. In unilateral contracts of this sort, a promisee who has fully performed can, as before, compel the promisor to perform those of his obligations which are enforceable; but further, in this converse case, the performance by the promisee of all the considerations asked, valuable and valueless, is always a good acceptance; for if one consideration performed is valuable the law is satisfied. *Jamieson* v. *Renwick*, 17 Vict. L. R. 124; *King* v. *Sears*, 2 C. M. & R. 48.

So much for unilateral contracts; but in the principal case the contract is bilateral. Now the rules governing in unilateral contracts evidently have equal force in bilateral contracts to make enforceable the legal obligations of a party sued, even if part of his obligations be illegal,